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SUBJECT: TURKEY: SIXTH ANNUAL TIP REPORT: INVESTIGATION
AND PROSECUTION OF TRAFFICKERS

REF: SECSTATE 03836

11. (U) Sensitive but unclassified. Please protect
accordingly.

12. (U) Post's responses are keyed to questions in Reftel A.
This is part 2 of 3 (septel).

Investigation and Prosecution of Traffickers

1A. (U) Chapter 1, Article 80 of the Turkish Penal Code, as amended by Parliament on September 26, 2004, and signed into law on October 11, 2004, specifically defines human trafficking and prescribes penalties for traffickers and their accomplices. The law covers both internal and transnational forms of trafficking. Penalties range from eight to twelve years of imprisonment (up from five to ten years in earlier versions of the law), and, at judicial discretion, an additional penalty of up to ten thousand days.

Trafficking crimes can also be (and have been) prosecuted under statutes of the Law on Combating Benefit-Oriented Criminal Organizations, Turkish Citizenship Law, Labor Law, Law on Working Permits for Foreigners, and the Law on the Prevention of Money Laundering.

Chapter 1, Article 80: Human Trafficking (as amended September 26, 2004):

(1) A person who procures or kidnaps persons or who takes or transports persons from one place to another or who harbors persons with a view to force them to work or to provide a service or to subject them to slavery or similar practices or to donate their organs by exerting threats, pressure, force or violence, by abusing his authority, by deceit or by

obtaining their consent through taking advantage of the opportunities they have to control them or of their helplessness shall be sentenced to imprisonment for a term of eight to twelve years and a judicial fine imposed of up to ten thousand days.

(2) In the event of actions which are undertaken for the purposes referred to in the first paragraph and which constitute an offense, the consent of the injured party shall be deemed void.

(3) Where juveniles under eighteen years of age are procured, kidnapped, taken or transported from one place to another or harbored for the purposes referred to in the first paragraph, the perpetrator shall be sentenced to the penalties referred to in the first paragraph, notwithstanding that none of the acts instrumental to the offense has been resorted to.

(4) Security measures shall be taken for legal entities on account of the above-mentioned crimes.

On June 1, 2005, Article 80 replaced the following anti-trafficking statutes in effect since August 3, 2002:

Turkish Penal Code Article 201(b):

(1) Those who provide, kidnap, take or transfer from one place to another and house other individuals with the intention of making them work or serve by force, subject them to slavery or similar treatment, threaten, pressure, use force or coercion to persuade them to give up their bodily organs, use undue influence, secure their consent by

deception or by using the desperation of such individuals shall be sentenced to five to ten years of heavy imprisonment and a heavy fine of not less than one billion liras.

(2) If the actions that constitute a crime attempted with the intentions laid out in the first paragraph exist, the victim is assumed not to have given his/her consent.

(3) If children below the age of eighteen are provided, kidnapped, taken or transferred from one place to another or housed with the intentions specified in paragraph one, even when no intermediary actions in relation to the crime are committed, the penalties foreseen in paragraph one shall still be applied to the perpetrator.

(4) If the crimes listed in the paragraphs above are committed in an organized manner, the penalties foreseen for the perpetrators shall be doubled.

¶B. (U) The revised Penal Code provides penalties for traffickers of eight to twelve years of imprisonment and, at judicial discretion, an additional ten thousand days imprisonment. The penalties apply to both traffickers of people for sexual exploitation and traffickers of people for labor exploitation.

¶C. (U) Chapter 1, Section 6 of the revised Penal Code provides varying degrees of penalties for sexual assault, rape, and sexual abuse of adults and minors, as noted below. Penalties may range from two years to life imprisonment, depending upon the circumstances. The new Code excludes several controversial articles from the previous law. For example, under the 2004 revisions, rape is considered a crime against the individual, rather than a crime against society. Under the previous Code, rapists could escape punishment by marrying their victims, and punishments for rape varied depending on the marital status of the victim and whether the victim was a virgin.

Section 6: Offenses Against Sexual Integrity

Article 102: Sexual Assault

(1) The perpetrator who violates the physical integrity of

another person by means of sexual conduct shall be imprisoned for a term of two to seven years upon the complaint of the victim.

(2) Where the act is committed by means of inserting an organ or similar object to the body, the perpetrator shall be imprisoned for a term of seven to twelve years. If the act is committed against the spouse, legal investigation and prosecution shall be initiated if the victim lodges a complaint.

(3) If the offense is committed,

- a) Against a person who is physically or mentally incapable of defending him/herself,
- b) By breaching of duties and/or abusing the functions pertaining to the official status,
- c) Against a person of first, second, or third degree blood relation or a relative by marriage,
- d) By using weapons and with the cooperation of more than one person,

penalties imposed in accordance with articles above shall be increased by half.

(4) In case excessive violence is exerted on the victim during the commitment of the offense, the perpetrator shall also be punished for deliberate wounding.

(5) In case the offense causes damage to the physical or mental health of the victim, the perpetrator shall be imprisoned for a term of not less than ten years.

(6) If, as a result of the crime, the victim enters into a vegetative state or dies, the sentence will be strict life imprisonment.

Article 103: Sexual Abuse of Children

(1) The perpetrator of child abuse shall be imprisoned for a term of three to eight years. Sexual abuse means:

a) any act of a sexual nature against a minor who has not reached fifteen years of age, or, if over fifteen years of age, lacks the competence to perceive the legal meaning and consequences of such acts.

b) sexual acts against other minors depending on use of force, threat, deception, or by any other reason affecting the will of the child.

(2) Where the sexual assault occurs as a result of insertion of an organ or similar object into the body, a penalty imprisonment from eight to fifteen years shall be imposed.

(3) Where the sexual assault is committed by a first, second or third degree blood relative, step-father, the person who has adopted the person concerned, guardian, tutor, teacher, caretaker, or other person in charge of providing health services or who bears the obligation for protection or supervision, or through abuse of the service relation, the penalty to be imposed, in accordance with the above paragraphs, shall be increased by half.

(4) Where the sexual assault is committed against a minor indicated in paragraph 1(a) as a result of force or threat, the penalty to be imposed, in accordance with the above paragraphs, shall be increased by half.

(5) Where the force and compulsion used with the aim of sexual assault lead to aggravated consequences of the offense of deliberate wounding, provisions of the offense of deliberate wounding shall apply additionally.

(6) In case the offense results in damage to the physical or mental health of the victim, the perpetrator shall be imprisoned to strict life imprisonment.

(7) Where the offense leads to the victim into a vegetative state or to die, the perpetrator shall be sentenced to strict life imprisonment.

ED. (U) Prostitution in Turkey is legal and regulated. Sex workers must have Turkish citizenship; foreign citizens cannot legally practice prostitution. Trafficking, smuggling with the intent to traffic, pimping, enforcing, or in any other way supporting the activities of a trafficking operation is illegal. The law also prohibits and provides punishment for individuals who own, operate or work to support the operation of brothels associated with human trafficking. The minimum age for prostitution in Turkey is 18.

EE. (U) According to figures provided by the Ministry of Interior, in 2005, 125 suspected traffickers were arrested, 134 were released, 105 escaped, 11 were deported, 3 were determined to have left the country, and one was sent to prison on other charges. In 2006, 15 were arrested, five released, 16 escaped, two deported, and one left the country.

According to Ministry of Justice's Judicial Records Statistics Bureau, Turkey's Heavy Penal Courts opened 166 cases against 241 suspected human traffickers from January through September, 2005. Forty-eight cases were resolved with 144 suspected traffickers: 75 were acquitted; 40 were remanded to other courts or dismissed; 20 were given probation or fines. A total of nine traffickers were convicted: five in Mugla were sentenced to five years imprisonment, 2,043 (approximately USD 1,600) YTL fine, and three years ban from public service; four in Antalya were sentenced to four years imprisonment, 1,325 YTL fine (approximately USD 1,000), and three years ban from public service.

Statistics for the October-December 2005 term and the first term of 2006 were not yet available. The Ministry of Justice does not yet have a computerized database, causing Ankara to rely on each province faxing in reports.

EF. (SBU) IOM statistics claim that a solid majority of trafficked individuals have no more than a middle school education; less than one-third have graduated from high school. These individuals are recruited mostly through personal contacts, such as a person posing as a friend or by an actual relative. While the trafficking rings are believed to be operated by men, the recruiters are overwhelmingly female, some of whom are former trafficking victims themselves. These recruiters often work under pressure from the traffickers, who threaten to kill their children or family members unless they cooperate. Women recruiters are prized because they more easily gain the trust of their female victims. Foreign victims trafficked to Turkey are typically recruited by small networks of operators. Groups may be as small as four or five people. Trafficking networks operating as tourist agencies or firms in source countries bring women to Turkey with official work permits. We have no evidence that government officials are involved. Most reports indicate that profits are channeled into expanding the networks' capacity and affluence. Networks tend to deposit proceeds in source country bank accounts through the Turkish banking system. Jandarma and other officials repeatedly insist trafficking in humans, arms, and narcotics are closely connected.

EG. (U) According to GoT officials, Turkey actively investigates cases of trafficking using special investigative techniques, including undercover operations, electronic surveillance, and mitigated punishment in TIP cases. Victim residents at the Istanbul shelter have also utilized the GoT's humanitarian visa program to lead police to traffickers.

In December 2004, Turkey revised its Code of Criminal Procedures to codify TIP-Specific surveillance, undercover operations, and mitigated punishment for suspects in

trafficking crimes. The Code regulates how to conduct criminal procedures in TIP investigations, as well as the rights, powers, and obligations of individuals involved in the process. This Code does not prohibit police from engaging in covert operations.

IH. (U) Cem Kolcu of the Turkish National Police reported that in 2005, 555 Foreigners' Police and Border Gate Department personnel attended training on the following topics:

- What is human trafficking?
- The difference between human trafficking and illegal immigration
- Who are human trafficking victims?
- National and international regulations in the fight against human trafficking
 - Differences between the old and new Turkish Penal Codes
 - The importance of national and international coordination in the fight against human trafficking
 - The UN Palermo Convention and supplemental protocols and international implementation in the fight against TIP
 - Bilateral cooperation agreements in the fight against human trafficking
 - Elements to pay attention to in operations against human trafficking
 - How to approach a victim
 - The importance of cooperating with NGOs while approaching victims
 - Administrative arrangements on approaching a victim
 - Case studies

According to HRDF's General Director, Berna Eren, HRDF held two workshops in 2005. In May, representatives of the Foreigner Departments from nine provinces gathered to share their experiences in working with trafficking matters and do group work on cross-border collaboration in the fight against human trafficking. Presentations by HRDF included recent developments in combating human trafficking in Turkey and an evaluation report of training. In September, health service providers and six state hospital managers assembled and, with HRDF's guidance, discussed the concept of human trafficking, GoT efforts to combat trafficking, the role of NGOs in the fight against trafficking, and HRDF's counter-trafficking program, as well as the Ministry of Health's circular.

In 2005, the focus of Jandarma training was on raising personnel awareness of trafficking. The mobile training unit continued its tour of TIP-targeted districts and trained 206 officers. One hundred twenty officers came to headquarters for four-day training on:

- How to treat victims as witnesses
- How to cooperate with NGOs and other agencies
- Investigative techniques from experts from Europol, Scotland Yard
- Sensitivities of victims (jointly with IOM/UNHCR)
- Human trafficking victims among refugees

One hundred fourteen officers sat in on shorter courses and conferences.

A portion of a 600,000 USD ESF grant funded seven IOM training workshops: four in cooperation with the Jandarma (three on combating trafficking with a total of 131 participants, and one orienting 1,500 officer cadets on counter-trafficking); one with the Partnership for Peace with 36 participants; one with the General Directorate of Security (Turkish National Police) on cooperation between the police and IOM (with 34 participants); and one on counter-trafficking training for 30 officers of the Anti-Smuggling and Organized Crime Department. Training topics included:

- International legal definitions of the crimes, trafficking in persons and migrant smuggling

- Actors, mechanisms, causes, consequences, victim profiles and latest trends
- Violation of human rights
- IOM activities in the field of counter-trafficking
- Case Studies
- Identification of trafficked victims
- Treatment of trafficking victims: best practices and referral system
- National legislation of Turkey
- Turkey's situation in the field of counter-trafficking and activities
 - The role of the NGO in combating trafficking; cooperation between NGOs, IOs and law enforcement
 - 157 Hotline
 - Counter-trafficking in source countries
 - Treatment of victims as witnesses
 - Investigation methods and techniques
 - Intelligence on trafficking
 - Seminar evaluation
 - Film: "Lilya Forever"
 - UNHCR connection

The Ministry of Justice sent a judge to a seminar in Moldova on trafficking in human beings in May 2005 and three judges and one prosecutor went on a working visit on trafficking to Moldova in November of 2005.

II. (SBU) Partner governments and source country NGOs reported that the implementation of general bilateral law enforcement agreements remains inconsistent. After much work on the Turkish side and delays by source countries, the GoT signed anti-TIP protocols with Georgia in March 2005, Ukraine in July 2005, and Moldova in February 2006. We have no numbers on cooperative international investigations on trafficking.

IJ. (SBU) The universal jurisdiction norm is recognized by the Turkish Criminal Code on the basis of certain offenses and crimes. Included in this norm are migrant smuggling and trafficking in human beings. A foreigner or Turkish trafficker is indictable and punishable in Turkey. The Turkish Minister of Justice may request a trial process be launched in Turkey against an accused person who has already been through the legal system in conjunction with these offenses in another country. We have no information regarding the extradition of persons charged with trafficking from other countries during the reporting period.

IK. (SBU) We do not have evidence of government involvement in or tolerance of trafficking at higher levels. Contacts state there is some tolerance of foreign prostitution as long as it is kept within certain limits.

IL. (SBU) We do not have evidence of GoT involvement in trafficking.

IM. (SBU) We do not have evidence that Turkey is a source or destination country for child sex tourism.

IN. (U) Turkey adopted the following conventions:

- ILO Convention 182 (Ratified early 2001).
- ILO Convention 29 and 105 on Forced or Compulsory Labor (ILO Convention 29 went into effect on January 27, 1998 and ILO Convention 105 on December 21, 1960).
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (Ratified May 9, 2002).
- The Protocol to Prevent, Suppress and Punish Trafficking-in-Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime (Signed December 2000; Ratified January 31, 2003 and implemented February 4, 2003).

WILSON